

FREDERICK COUNTY PLANNING COMMISSION

Meeting Minutes

April 21, 2010

Commission Members Present:

Richard Floyd
Catherine Forrence, Chair
Kai Hagen, BoCC Liaison

Robert White, Vice Chair
Audrey Wolfe

Commission Members Absent:

Joseph Brown III

John McClurkin, Secretary

Planning Staff Present:

Ron Burns, Traffic Engineer, DPDR
Michael Chomel, Senior Asst. Co. Attorney
Mark Depo, Deputy Director, Div. of Planning
Tolson Desa, Planner, DPDR
Shawna Lemonds, Project Manager
Stephen O'Philips, Principal Planner, DPDR
Betsy Smith, Director, DPDR

9:30 A.M.

MORNING SESSION

CHAIR FORRENCE BROUGHT THE MEETING TO ORDER AT 9:30 A.M.

CONSENT AGENDA

- a. **APFO Letter of Understanding (LOU) for Wedgewood West MXD (formerly Younkings)** - Requesting approval of signed LOU for a mixed-use development of 300,060 ± sq. ft. of warehousing and auxiliary office use; 300,060 ± sq. ft. of manufacturing and auxiliary office use; and 76,070 ± sq. ft. of retail use. Situated on 52.98 acres and located at the western quadrant of English Muffin Way (Extended) and New Design Road. APFO for this project approved at the May 14, 2008 FcPc Meeting. File S-1147, A/P #6425

Staff Findings/Recommendations:

Findings:

The REVISED Letter of Understanding (revised from the April 14th FcPc reports Packet) fulfills the requirements of the APFO FcPc approval of May 14, 2008.

Recommendation:

Staff (Stephen O'Philips) recommended signature of the attached REVISED Letter of Understanding.

MOTION: Mr. White made a motion for approval of the APFO Letter of Understanding for Wedgewood West MXD (formerly Younkings), 2nd by Ms. Wolfe

White/2nd Wolfe- Approved 4-0-1-2

Yeas-4 (Floyd, Hagen, White, Wolfe), Nays-0, Abstain- 1 (Forrence), Absent- 2 (Brown, McClurkin)

ZONING TEXT AMENDMENT

- a. **ZT-10-01 - Euclidean Institutional/Euclidean Open Space Recreation** - A public hearing will be held regarding proposed amendments to the zoning ordinance intended to permit private school in conjunction with a place of worship, add cross references and specificity regarding design

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requirements, and provide clarification regarding permitted uses, subdivision, and processing within the Euclidean Institutional zoning district, as well as deleting provisions related to the Euclidean Open Space Recreation zoning district.

Staff Findings/Recommendations:

Staff requested a recommendation regarding the Ie and OSRe Zoning Districts Text Amendment and the three subdivision options provided for Board of County Commissioner (BoCC) consideration, and especially the 5 to 10 acre minimum lot size.

Staff Presentation:

Shawna Lemonds presented the staff report.

There was discussion among the Commission regarding the options.

Ms. Forrence requested clarification of the minimum lot size standards and the non-residential subdivision options proposed in Option 2.

Ms. Lemonds elaborated stating there is an option for non-residential subdivision of 3 lots and a remainder with a 5 or 10 acre minimum lot size requirement. She stated the BoCC had concerns that 5 acres may not be large enough or efficient for the permitted uses within the Euclidean Institutional zone such as private school, college or university. The 10 acre option was added based on those BoCC discussions.

Ms. Forrence expressed concern of the traffic and impacts to the neighboring property owners due to the location of the existing Euclidean Institutional land uses.

Ms. Lemonds stated Option 3 provides for non-residential and residential subdivision including residential clustering. This option permits the subdivision of the original parcel to provide for those uses permitted in the Euclidean Institutional zoning district of which single family residential has been added as a permitted use. This option also includes either a 5 acre or 10 acre minimum lot size for non-residential uses.

There was a question regarding the difference between caretaker residences and tenant houses are permitted by the zoning ordinance.

Ms. Lemonds stated that a caretaker residence is an accessory use and would not need the subdivision process in order to be included and would have to be located on the same property as the primary use.

Mr. Depo stated there may a limitation as to the number allowed and all would be based upon the activities associated with the land use requesting the caretaker residence and would be reviewed during site plan approval.

Staff recommends options 1 or 2, finding option 3 to be complex as far as adding language to the zoning ordinance potentially causing confusion to the purpose and intent of the creation of the Euclidean Institutional zoning district.

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Mr. White was not in favor of the subdivision and did not understand the necessity of the option and stated the zone implies a very specific use.

Ms. Lemonds stated through Staff research, approximately 11 properties were identified as potentially having subdivision potential if provided with the option under the agricultural subdivision regulations. However, those properties are of varying sizes and other variables such as environmental features, public facilities requirements have yet to be looked at in order to assess whether the properties could achieve developments rights. Subdivision discussion is included as a component in the text amendment due to the fact that the subject was not discussed when this zoning district was created. However, the issue was brought forward as part of the Countywide Comprehensive Plan discussions and is being addressed within the text amendment options.

Public Comment:

None

MOTION: Mr. White made a motion for approval of zoning text amendment ZT-10-01, Option 1, to the Board of County Commissioners (BoCC), specifically recommending against Options 2 and 3, based on rationale that:

- A failed Euclidean Institutional situation that could not continue as the original land use or another institutional land use permitted in the zone, could revert to Agricultural zoning.
- That the concept was not to provide for the possibility of a multiplicity of uses, rather, it was to provide for institutional uses on an existing site.

The motion was 2nd by Mr. Floyd.

White/2nd Floyd - Approved 4-0-1-2

Yeas-4 (Floyd, Forrence, White, Wolfe), Nays-0, Abstain- 1 (Hagen), Absent- 2 (Brown, McClurkin)

SITE PLAN

- a. **Braddock Heights Volunteer Fire Department** – Requesting Site Plan approval for 4,606 square foot 2 story addition onto an existing 7,457 square foot building on a 1.73-acre site. Located along Jefferson Boulevard, south of Maryland Avenue / Old Swimming Pool Road. Zoned: Village Center (VC), Middletown Planning Region. Tax Map 66 / Parcel 70. File SP#85-34, AP's #10316 (SP), #10318 (APFO) & #10317 (FRO)

Staff Findings/Recommendations:

Findings:

Based on the discussion in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, APFO and FRO requirements once the conditions of approval have been met.

Staff notes that if the Planning Commission conditionally approves the site plan, the site plan is valid for a period of three (3) years from the date of Planning Commission approval.

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Staff has no objection to conditional approval of the site plan.

Recommendation:

Should the Planning Commission conditionally approve this Site Plan SP# 85-34 (AP# 10316, APFO 10318 & FRO 10317) for the proposed Braddock Heights Volunteer Fire Department, the motion for approval should include the following item:

1. Site plan approval for a period of three years from today's date.
2. **Loading Space Modification:** Modification request from Zoning Ordinance Section §1-19-6.210 in order to eliminate the need for any designated loading spaces due to the nature of the use on site.
3. **Landscaping Modification:** Modification request from Zoning Ordinance Section §1-19-6.400.A.1;B.2;C.1;D.1:and D.2
4. **Dumpster Modification:** Modification request from Zoning Ordinance Section §1-19-7.500.
5. **Entrance Spacing Modification:** The Applicant has applied for an entrance spacing modification (See Exhibit #3) for the close proximity of the twenty foot wide eastern access drive and a private access drive located approximately 75 feet to the east.

Staff recommends that the following items be added as conditions of approval:

1. Address all agency comments as the plan proceeds through completion.
2. Add more landscaping to the western property line buffer.

Staff Presentation:

Tolson DeSa presented the staff report.

Ms. Forrence questioned why the kitchen was not listed on the proposed site plan, questioned note #24 on the plan related to recycling and trash collection reciprocals, and why a justification was not required from the applicant.

Mr. DeSa stated the kitchen is part of the existing structure and stated dumpster reciprocals are not required because the facility does not accumulate a considerable amount of trash. There will be curbside trash collection on site and the applicant will recycle as necessary.

Betsy Smith commented that Staff has worked the applicant regarding parking lighting landscaping, the dumpster issue and various other criteria that are new to the site plan requirements, especially those redevelopment sites and those well into the development review process when those modification changes were implemented. She stated Staff has had discussions with applicants and have not yet established a formal process for Modification Requests and urge the Planning Commission to work with Staff to establish criteria and information they work like to be presented.

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Applicant Presentation:

Billy Smith, President and Lieutenant of the Braddock Heights Volunteer Fire Company and Scott Bowen, Architect for the applicant

Ms. Forrence requested clarification of note #6 on the plan regarding the number of employees as compared the applicant's presentation.

Public Comment:

None

MOTION: Mr. White made a motion for approval in accordance with the Staff findings and recommendations including the additional staff recommendations labeled #1 and #2 to become #6 and #7, with Findings and Recommendations to be included as part of the minutes, and the site plan notes be updated to reflect the as proffered number of employees to 3-4, 2nd by Mr. Hagen.

White/2nd Hagen - Approved 5-0-0-2

Yeas-5 (Floyd, Forrence, Hagen, White, Wolfe), Nays-0, Absent- 2 (Brown, McClurkin)

- b. **Hyatt Park Lot 2b: Mid Atlantic Sports, LLC** - Requesting Site Plan approval for 33,000 square foot addition onto an existing 28,000 square foot building as well as the relocation of a 9,500 square foot fabric tension structure on a 9.77-acre site. Located at the end of Tyler Court, off of Urbana Pike MD 355. Zoned: Limited Industrial (LI), Urbana Planning Region. Tax Map 106 / Parcel 90. File SP99-41, AP's #10447 (SP), #10542 (APFO) & #10448 (FRO)

Staff Findings/Recommendations:

Findings:

Based on the discussion in the staff report and with the conditions listed below, Staff finds that the application meets and /or will met all applicable Zoning, APFO and FRO requirements once the conditions of approval have been met.

Staff noted that if the Planning Commission conditionally approves the site plan, the site plan is valid for a period of three (3) years from the date of Planning Commission approval.

Staff has no objection to conditional approval of the site plan.

Recommendation:

Should the Planning Commission conditionally approve this Site Plan SP#99-41 (AP#10447, APFO 10542 & FRO 10448) for the proposed Mid Atlantic Sports Building within Hyatt Park Lot 2B, the motion for approval should include the following item:

1. Site plan approval for a period of three years from today's date.
2. **Landscaping Modification:** Modification request from Zoning Ordinance Section §1-19-6.400.D.2

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3. **Parking Modification:** Modification request from Zoning Ordinance Section §1-19-6.220.A.1

Staff recommends that the following items be added as conditions of approval:

1. The Applicant shall continue to address all agency comments as the plan proceeds through completion.
2. The Applicant will ensure that the chain link fence and privacy screening surrounding the site is intact and provides full visual screening from the public way.
3. Platted septic area must be relocated and properly shown via a correction plat and rerecorded.

Staff Presentation:

Tolson DeSa presented the Staff Report.

FORRENCE LEFT THE ROOM AT 10:54 A.M., RETURNED AT 10:56 A.M.

There was discussion among the Planning Commission regarding the denial status and comments received from the Health Department as well as issues with landscaping, screening and use of gravel on the site for parking as part of the modification request.

Mr. DeSa stated that in response to the Health Department comments, the applicant had submitted a corrected plan and has resolved the issues.

Betsy Smith, during the hearing, received a message that the Health Department comments had been updated in the HANSEN system and status changed to a Conditional approval.

Applicant Presentation:

Lee Miller of Daft, McCune & Walker and Tilford Jones, Managing Partner with Mid Atlantic Sports

Public Comment:

None

MOTION: Mr. Hagen made a motion for approval with the three added conditions recommended by Staff listed in the staff report as #1, #2, #3 to become #4, #5, #6, and to have the finding and recommendations included in the minutes, 2nd by Ms. Wolfe.

Hagen/2nd Wolfe - Approved 5-0-0-2
Yeas-5 (Floyd, Forrence, Hagen, White, Wolfe), Nays-0, Absent- 2 (Brown, McClurkin)

BREAK AT 11:36 A.M., MEETING RESUMED AT 11:45 A.M.

PLANNING COMMISSION TEXT AMENDMENT REQUEST

- a. **Scenic Reserve Overlay Zone** – Planning Commissioner White brought forward a request for the Board of County Commissioners to initiate a text amendment to create a Scenic Reserve Overlay Floating Zone.

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Purpose:

Mr. White presented his proposal. The purpose is to create a floating zone with certain restrictions that would preserve scenic vistas and agricultural, rural and open space of special value, to protect this fragile but important environment by limiting the size of residential and other development within the boundaries of this "Scenic Reserve", and to create such a Scenic Reserve overlay covering the area lying between I-270 on the east, the Monocacy River on the west, Rte. 80 on the north, and the Montgomery County line and the Potomac River on the south.

Specifics:

1. This floating zone designation would overlay Agricultural and Resource Conservation zones within its boundaries. The property would retain all rights, privileges and restrictions of the underlying Euclidean zoning, with the specific exceptions set forth below.
2. The footprint and height of residential buildings within the boundaries of Scenic Reserve would be limited. The limit would be maximum footprint of 5,000 square feet and a maximum height of 30 feet from the average ground level surrounding the base of the structure.
3. It would limit the height of other structures within the boundaries of the Scenic Reserve zone to 30 feet, excepting those structures specifically dedicated solely and directly to agricultural uses, such as barns and silos.
4. I would require substantially increased use of tree and shrub planting and pervious paved parking surfaces to reduce or hide the visual impact of commercial or other not specifically agricultural or residential uses within the zone with footprints exceeding 5,000 square feet.
5. The inclusion of properties zoned agricultural or resource conservation within the boundaries of such a designated Scenic Reserve will in no way be construed as to modify, restrict, or limit any subdivision or other unspecified rights that such properties might otherwise have due to their underlying Euclidean zoning, other than the limitations herein enumerated.
6. No package sewer plants shall be allowed within this floating zone.
7. The area in Frederick County lying between I-270 on the east, the Monocacy River on the west, Rte. 80 on the north, and the Montgomery County line and the Potomac River on the south shall be designated a Scenic Reserve.

Commissioner Hagen stated when the BoCC worked on the Comprehensive Plan, there was a concerted effort to create these priority preservation areas and have done so but during those discussions, the areas in the southern part of the county was discussed involving extending it over to the Montgomery County Reserve line but the BoCC specifically did not at that time because the priority preservation areas were to a large extent reduced from much larger areas of the county by virtue of agricultural productivity, soil quality and such criteria that this area did not entirely fit and would have been less consistent with across that category. He stated there are significant qualities about the region that should be protected, but qualities that reach far beyond scenic concerns and that this proposal would be a good way to follow up on that desire but to not isolate the agricultural preserve district and to not fragment the areas further with these exceptional qualities.

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He also suggested the Commission to try to find another way to define the intent other than by use of the term "Scenic".

Mr. Depo suggested changing the language to state "study mechanisms for the protection of" and deleting "zoning district". He also stated Mr. Soter, Planning Director, is scheduling a meeting with the BoCC to provide a matrix of all the action items in the Comprehensive Plan as well as the responsible agencies and the timing of those actions and believes this subject is one of the long term action items included. He commented that perhaps the Commission could suggest the item be moved forward in the implementation strategies.

There was discussion regarding Floating Zone versus Overlay Zone and criteria of appropriateness of each. There was also discussion about the term "Scenic" and its meaning and interpretation.

Commissioner Hagen suggested forwarding to the BoCC general boundary identified along with some of the rationale, the reference to the Comprehensive Plan and strongly encourage them to consider this area an area of "special interest" and support discussion and review of various options for providing a higher level of long term protection for the ecological, historic, and scenic values in the area. This allows the ability to look at what other communities have done with everything from view sheds, etc. without assuming a specific zoning category.

Ms. Forrence referenced a section from the 2004 Urbana Region Plan, page 58, related to countywide historic and natural resources and the need for protection and made the point that there have been thoughts and discussions before on this topic. She suggested using language that is already in the Comprehensive plan.

Mr. White referenced the Comprehensive Plan action item NR-A -14, which talks about studying "the need for a new zoning district that would afford greater protection of natural resources and environmentally sensitive features" and stated his proposal is not meant to be the sole response to this action item, but rather one response that would fall under this action item.

Michael Chomel commented on the issue of Floating zone versus Overlay zone stating the Maryland courts have not approved an overlay zone and explained the purpose of a Floating zone. A Floating zone is designed to provide for more intensive development with additional governmental control and has to be requested by the property owner and cannot be imposed legislatively. He explained that the term "zone" or "zoning" originated as an effort to place similar uses in similar geographic areas and dealt with use not implementation. He expressed hesitance in use of the terms "zone" and "scenic" and was more in favor of using "environmentally sensitive areas" or similar general language.

Commissioner Hagen suggested modifying the area boundary to include the areas south of the Monocacy River, taking the river all the way up to I-270 and the Montgomery County line, as opposed to cutting it off at Rt. 80.

HAGEN LEFT THE MEETING AT 12:21 P.M.

Mr. White stated he would revise his proposal letter, taking into consideration the meeting discussions, and will bring it back before the Planning Commission.

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Mr. Depo reminded the Commission about the meeting that Mr. Soter is scheduling with the BoCC in mid to late May to discuss the Comprehensive Plan Action items and urged them to complete their recommendations by then.

BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED AT 12:23 P.M.

Respectfully Submitted,

Catherine Forrence, Chair

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